

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GEORGE W. BROWN,

Plaintiff(s),

- against -

THE BROOKDALE HOSPITAL MEDICAL CENTER,  
SANJEEV RAJPAL, M.D., CLASS SURGERY  
BROOKLYN GROUP, P.C., THE MOUNT SINAI  
HOSPITAL, HOWARD CHOI, M.D., DANIELLE  
PERRET, M.D., BRIAN RIORDAN, M.D., NEW  
FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR  
REHABILITATION & NURSING, INC., FRANKLIN  
CENTER FOR REHABILITATION & NURSING,  
ISRAEL SHERMAN, WILLIAM DUKE, M.D.,  
HILLSIDE MANOR COMPREHENSIVE CARE  
CENTER, and THE NEW YORK HOSPITAL  
MEDICAL CENTER OF QUEENS,

Defendants.  
----- X

: 08 CV 1093 (LMK)

: **AMENDED**  
**VERIFIED ANSWER**

: Assigned to:

: Judge Lawrence M. McKenna

Defendants, THE MOUNT SINAI HOSPITAL, HOWARD CHOI, M.D., DANIELLE  
PERRET, M.D. and BRIAN RIORDAN, M.D., by their attorneys, WILSON, ELSER,  
MOSKOWITZ, EDELMAN & DICKER LLP, respond to the allegations in the Complaint as  
follows:

**AS AND FOR AN ANSWER AS TO NATURE OF THE CASE**

1. Deny the allegations contained in paragraphs "1", "2", "3", "4" and "6".
2. Deny in the form alleged and deny as improperly pleaded evidentiary material as  
to paragraphs "5", "7" and "8" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO JURISDICTION AND VENUE AND PARTIES**

3. Deny the allegations contained in paragraphs "9", "10", "64", "65" and "73" in the form alleged and refer all questions of law to this Honorable Court.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "74", "75", "76" and "77" and refer all questions of law to this Honorable Court.

5. Deny the allegations contained in paragraph "62" in the form alleged except admit that THE MOUNT SINAI HOSPITAL is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York and refer all questions of law to this Honorable Court.

6. Deny the allegations contained in paragraph "63" in the form alleged except admit that THE MOUNT SINAI HOSPITAL maintained appropriate services incident to its function as a hospital and refer all questions of law to this Honorable Court.

7. Deny the allegations contained in paragraph "66" in the form alleged except admit that plaintiff, George W. Brown was a patient of The Mount Sinai Hospital.

8. Deny the allegations contained in paragraph "68" in the form alleged except admit that plaintiff George W. Brown was a patient of Howard Choi, M.D.

9. Deny the allegations contained in paragraph "70" in the form alleged except admit that plaintiff George W. Brown was a patient of Danielle Perret, M.D.

10. Deny the allegations contained in paragraph "72" in the form alleged except admit that plaintiff George W. Brown was a patient of Brian Riordan, M.D.

**AS AND FOR AN ANSWER AS TO GENERAL FACTUAL BACKGROUND**

11. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "78", "80" and "81" and refer all questions of law to this Honorable Court.

12. Deny the allegations contained in paragraph "79".

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION  
& NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D.**

13. In response to paragraph "82", repeat each admission or denial made herein as though fully set forth hereat.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "83" and "84" and refer all questions of law to this Honorable Court.

15. Deny knowledge and information sufficient to form a belief as to the truth of the allegations and deny as improperly pleaded evidentiary material as to paragraph "85" and refer all questions of law to this Honorable Court.

16. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96" and "97" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION &  
NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D., PURSUANT  
TO 42. U.S.C. §1395i-3; 42 U.S.C. §1396r and 42 CFR Part 483, et seq.**

17. In response to paragraph "98", repeat each admission or denial made herein as though fully set forth hereat.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "99", "100", "101", "102", "103", "104", "105", "106", "107" and "108" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION &  
NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D., UNDER  
NEW YORK PUBLIC HEALTH LAW §2801-d and 10 NYCRR §415.12**

19. In response to paragraph "109", repeat each admission or denial made herein as though fully set forth hereat.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "110", "111", "112", "113", "114", "115", "116", "117", "118" and "119" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE  
OF ACTION AS TO THE BROOKDALE HOSPITAL  
MEDICAL CENTER and SANJEEV RAJPAL, M.D.**

21. In response to paragraph "120", repeat each admission or denial made herein as though fully set forth hereat.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "121", "122", "123", "124" and "125" and refer all questions of law to this Honorable Court.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "126", "127", "128" and "129" refer all questions of law to this Honorable Court.

24. Deny the allegations contained in paragraph "130".

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE  
OF ACTION AS TO SANJEEV RAJPAL, M.D.  
and CLASS SURGERY BROOKLYN GROUP, P.C.**

25. In response to paragraph "131", repeat each admission or denial made herein as though fully set forth hereat.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "132", "133", "134", "135", "136" and "137" and refer all questions of law to this Honorable Court.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "138", "139", "140" and "141" refer all questions of law to this Honorable Court.

28. Deny the allegations contained in paragraph "142".

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION  
AS TO THE MOUNT SINAI HOSPITAL, HOWARD CHOI, M.D.,  
DANIELLE PERRET, M.D. and BRIAN RIORDAN, M.D.**

29. In response to paragraph "143", repeat each admission or denial made herein as though fully set forth hereat.

30. Deny the allegations contained in paragraphs "144", "145" and "148" in the form alleged and refer all questions of law to this Honorable Court.

31. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "146" and "147" and refer all questions of law to this Honorable Court.

32. Deny the allegations contained in paragraphs "149", "150", "151", "152" and "153".

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE  
OF ACTION AS TO WILLIAM DUKE, M.D. and HILLSIDE  
MANOR COMPREHENSIVE CARE CENTER**

33. In response to paragraph "154", repeat each admission or denial made herein as though fully set forth hereat.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "155", "156", "157", "158", "159", "160" and "162" and refer all questions of law to this Honorable Court.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "161", "163" and "164" and refer all questions of law to this Honorable Court.

36. Deny the allegations contained in paragraph "165".

**AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF  
ACTION AS TO THE NEW YORK HOSPITAL MEDICAL  
CENTER OF QUEENS and WILLIAM DUKE, M.D.**

37. In response to paragraph "166", repeat each admission or denial made herein as though fully set forth hereat.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "167", "168", "169", "170", "171" and "172" and refer all questions of law to this Honorable Court.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "173", "174", "175" and "176" and refer all questions of law to this Honorable Court.

40. Deny the allegations contained in paragraph "177".

**AS AND FOR AN ANSWER AS TO DAMAGES**

41. Deny the allegations contained in paragraph "178".

**AS AND FOR AN ANSWER AS TO CERTIFICATE OF MERIT**

42. Deny the allegations contained in paragraph "179" in the form alleged and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO DEMAND FOR JURY TRIAL**

43. Deny the allegations contained in paragraph "180" in the form alleged and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO PRAYER FOR RELIEF**

44. Deny the allegations contained in paragraphs "1" and "2".

**AS AND FOR A FIRST SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

45. Pursuant to CPLR Article 16, the liability, if any, of the answering defendants, for non-economic loss shall not exceed their equitable shares of liability.



**AS AND FOR A SECOND, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

46. That the injuries of the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

**AS AND FOR A THIRD, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

47. The Complaint fails to state a cause of action upon which relief may be granted.

**WHEREFORE**, defendants, THE MOUNT SINAI HOSPITAL and HOWARD CHOI, M.D. demand judgment dismissing the complaint together with the costs and disbursements of this action.

Dated: New York, New York  
March 26, 2008

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 

Robin Nemio Gregory (RNG 4785)  
Attorneys for Defendants

**THE MOUNT SINAI HOSPITAL,  
HOWARD CHOI, M.D.,  
DANIELLE PERRET, M.D. and  
BRIAN RIORDAN, M.D.**

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New York, New York 10017-5639  
(212) 490-3000  
File No. 22930.00949

TO: LEAHEY & JOHNSON, P.C.  
Attorneys for Plaintiff(s)  
120 Wall Street, Suite 2220  
New York, New York 10005  
(212) 269-7308



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  )ss.:  
COUNTY OF NEW YORK    )

ETHEL WESTPHAL, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Warwick, New York.

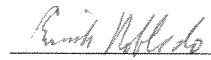
That on the 26<sup>th</sup> day of March, 2008, deponent served the within **AMENDED VERIFIED ANSWER** upon:

LEAHEY & JOHNSON, P.C.  
Attorneys for Plaintiff(s)  
120 Wall Street, Suite 2220  
New York, New York 10005

at the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed envelope, in an official United States Postal depository under the exclusive care and custody of the United States Post Office within the State of New York.

  
\_\_\_\_\_  
ETHEL WESTPHAL

Sworn to before me this  
26<sup>th</sup> day of March, 2008

  
\_\_\_\_\_  
Notary Public

ERAIDA ROBLEDOS  
NOTARY PUBLIC, State of New York  
No. 01RO5037889  
Qualified in Bronx County  
Commission Expires January 17, 2011